

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Petition of WorldCom, Inc.)

CC Docket No. 00-218

Pursuant to Section 252(e)(5) of the)

Communications Act for Preemption of)

The Jurisdiction of the Virginia State)

Corporation Commission Regarding)

Interconnection Disputes with Verizon)

Virginia Inc. and for Expedited Arbitration)

**MCI'S OPPOSITION TO MOTION TO STRIKE MCI'S SUBMISSION FOR
APPROVAL OF AMENDMENT TO VERIZON-MCI INTERCONNECTION
AGREEMENT**

Pursuant to section 1.45(b),¹ WorldCom, Inc. ("MCI") hereby submits its opposition to Verizon's motion to strike ("Verizon Motion")² MCI's filing with the Commission for approval of an amendment to MCI's interconnection agreement with Verizon Virginia, Inc. ("Verizon"), which was arbitrated by the Wireline Competition Bureau.³ As indicated in Verizon's Motion, MCI and Verizon voluntarily negotiated an amendment that sets forth the prospective terms for intercarrier compensation and interconnection architecture in certain areas of the country. MCI believes that its request

¹ 47 C.F.R. § 1.45(b). Verizon did not indicate under which rule its Motion to Strike was filed. MCI therefore presumes that the general pleading rules apply.

² Verizon's Motion to Strike MCI's Submission for Approval of Amendment to Verizon-MCI Interconnection Agreement, CC Docket No. 00-218, filed April 8, 2004.

³ Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, *Memorandum Opinion and Order*, 18 FCC Rcd 17722 (WCB 2003); *see also* Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, *Memorandum Opinion and Order*, 17 FCC Rcd 19654 (WCB 2002).

for Commission approval of this amendment is properly before this agency, which assumed jurisdiction over this matter and arbitrated and approved the underlying agreement.⁴ As a result, Verizon's motion should be denied.

ARGUMENT

As an initial matter, it is irrelevant that Verizon filed the instant amendment with the Virginia State Corporation Commission ("VSCC") one week prior to MCI's filing with this Commission.⁵ Verizon's filing does not change the fact that Verizon made its filing with the wrong agency. When Verizon submitted the amendment, it was well aware that MCI did not agree that the amendment should be filed with the VSCC, and it understood that MCI would object to any such filing. The question is where the amendment properly should be filed, not who filed first.

Equally unpersuasive is the fact that the amendment affects other interconnection agreements between MCI and Verizon in Virginia.⁶ Unlike the other agreements between MCI and Virginia, the underlying agreement in *this* proceeding was arbitrated by this Commission and thus remains under this Commission's jurisdiction.

Verizon treats this as a standard interconnection amendment. But in our letter accompanying our submission to the FCC, we observed that in the "usual case, an amendment would be filed with the appropriate state commission."⁷ As we went on to demonstrate, this is not the usual case. Here, pursuant to section 252(e)(5) of the Telecommunication Act of 1996 (the "1996 Act"), this Commission preempted the

⁴ Letter, dated March 26, 2004, from Kecia Boney Lewis, Senior Counsel, MCI to Ms. Marlene H. Dortch, Secretary, FCC, CC Docket No. 00-218 ("MCI Letter").

⁵ Verizon Motion at 2.

⁶ Id.

⁷ MCI Letter at 1.

jurisdiction of the VSCC, which refused to arbitrate the terms of an interconnection agreement between MCI and Verizon. Contrary to Verizon's claim,⁸ it is not necessary for the FCC to again preempt the VSCC's jurisdiction regarding the instant amendment because the VSCC no longer has jurisdiction over the original interconnection agreement or any subsequent amendments thereto. As the Commission noted, section 252(e)(5) requires that it "preempt the jurisdiction of a state commission in *any proceeding or matter* in which a state commission "fails to act to carry out its responsibility under [section 252].""⁹

Verizon is correct that the Commission does not take an expansive view of when preemption should occur pursuant to section 252(e)(5).¹⁰ However, when the FCC does decide that preemption is necessary, as it did here, it retains jurisdiction over the agreement. In the Local Competition Order, the Commission addressed the question of whether or not it should retain authority for proceedings or matters for which it assumes jurisdiction pursuant to section 252(e)(5). There, the Commission concluded that once a proceeding is before the Commission, any and all further action regarding that proceeding or matter will be before the Commission.¹¹ The FCC determined that there was no provision in the 1996 Act for returning jurisdiction to the state commission. In fact, the FCC reasoned that, with its knowledge of the issues after mediation or an

⁸ Verizon Motion at 3.

⁹ Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and for Expedited Arbitration, Preemption Order, 16 FCC Rcd 6224, ¶ 4 (WCB 2001) ("Preemption Order") (emphasis added).

¹⁰ Verizon Motion at 7.

¹¹ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, First Report and Order, 11 FCC Rcd 15499, 16129, ¶ 1289 (1996) (subsequent history omitted).

arbitration, it “would be in the best position efficiently to conclude the matter.”¹² MCI agrees with the Commission’s reasoning. Verizon’s proposal would create an administrative nightmare – with parts of an agreement under the jurisdiction of the FCC pursuant to this clear rule, while amendments to the very same agreement are lodged with the states and subject to their distinct jurisdiction. Under that chaotic regime, it would be impossible to read the contract as a whole should any dispute arise, and impossible to know with certainty which regulatory authority had the power to adjudicate disputes under the Agreement. That cannot possibly be the law.

Indeed, the FCC expressly rejected the argument that state commission approval was necessary *after* FCC mediation or arbitration. The Commission’s sensible view is that, in carrying out its duties under section 252(e)(5), the FCC also acts for state commissions under section 252(e)(1) to approve any interconnection agreement adopted by negotiation or arbitration. Specifically, the FCC stated that it did not read section 252(e)(1) or any other provision as calling for state commission approval or rejection of agreements mediated or arbitrated by the FCC.¹³ In sum, the Commission has already decided that, “in those instances where a state commission has failed to act, the Commission acts on behalf of the state and no additional state approval is required.”¹⁴

Finally, Verizon’s reliance on the Preemption Order is misplaced. There, the Commission expressly “reiterate[d] the finding in the Local Competition Order that the Commission retains exclusive jurisdiction over any proceeding or matter over which it

¹² Id.

¹³ Id., ¶ 1290.

¹⁴ Id.

assumes responsibility under section 252(e)(5)."¹⁵ Verizon's position that the Preemption Order limited the FCC's jurisdiction to the actual arbitration event itself cannot stand.¹⁶

CONCLUSION

For the foregoing reasons, Verizon's motion should be denied.

Respectfully submitted,

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Dated: April 19, 2004

¹⁵ Id., ¶ 11, citing Local Competition Order, ¶ 1289.

¹⁶ MCI does not understand Verizon's statement that the Commission may not preempt a state's jurisdiction to approve negotiated agreements, citing section 252(e)(4). There really is no dispute that the Commission would not find that a state failed to act where is no affirmative obligation for action by the state commission. This argument, however, is not really relevant in cases where the Commission has already determined that the VSCC failed to act in arbitrating or mediating the underlying interconnection agreement. The state does not get a second chance.

Certificate of Service

I, Lonzena Rogers, hereby certify, that on this nineteenth day of April, 2004, I have served electronically, by hand delivery or by United States Postal Service first class mail, a true and correct copy of MCI's Opposition To Motion To Strike MCI's Submission For Approval Of Amendment To Verizon-MCI Interconnection Agreement in the matter of CC Docket No. 00-218 on the following:

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